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DEPARTMENT OF COMMERCE

International Trade Administration

C-489-502

Circular Welded Carbon Steel Pipes And Tubes From Turkey: Notice of Court Decision Not in Harmony With Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results of Countervailing Duty Administrative Review; 2012

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On May 11, 2016, the United States Court of International Trade (the Court) issued *Toscelik II*,¹ which sustained the Final Remand Results² that the Department of Commerce (the Department) issued in connection with *Toscelik I*,³ concerning the Department's final results of administrative review of the countervailing duty order on circular welded carbon steel pipes and tubes from Turkey covering the period of review January 1, 2012, through December 31, 2012 (POR).⁴

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,⁵ as clarified by *Diamond Sawblades*,⁶ the Department is notifying the public that the final judgment in this case is not in harmony with the Department's 2012 Final Results.

¹ See *Toscelik Profil Ve SAC Endustrisi A.S. v. United States*, Court No. 14-00211, Slip. Op. 16-50 (CIT May 11, 2016) (*Toscelik II*).

² See Final Results Of Redetermination Pursuant To Court Remand, Court No. 14-00211, Slip Op. 16-50 (May 11, 2016, May 11, 2016) (Final Remand Results), which is available at <http://enforcement.trade.gov/remands/index.html>.

³ See *Toscelik Profil Ve SAC Endustrisi A.S. v. United States*, Court No. 14-00211, Slip. Op. 15-144 (CIT December 21, 2015) (*Toscelik I*).

⁴ See *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part*, 79 FR 51140 (Aug. 27, 2014) and accompanying Issues and Decisions Memorandum (2012 Final Results).

⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁶ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

The Department is also amending the *2012 Final Results* with respect to Toscelik Profil Ve SAC Endustrisi A.S. (Toscelik).

DATES: Effective May 21, 2016

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SUPPLEMENTARY INFORMATION:

Background

On August 27, 2014, the Department issued the *2012 Final Results*.⁷ In the *2012 Final Results*, the Department assigned Toscelik the total net subsidy rate it had calculated for Toscelik in the prior review of that company, the *2011 Final Results*.⁸ Toscelik had challenged its rate in the *2011 Final Results* at the Court and, as a result of remand redetermination and the Court's affirmance thereof, Toscelik's rate from the *2011 Final Results* decreased.⁹ Toscelik then challenged the Department's *2012 Final Results*, contending that the results of its challenge to the rate from the *2011 Final Results* should extend to the rate the Department assigned Toscelik for the 2012 POR. At issue in the instant litigation was whether the Department should apply the rate the Department determined in the *2011 Amended Final Results* to the *2012 Final Results*, instead of the rate originally assigned to Toscelik, notwithstanding that Toscelik failed to exhaust its administrative remedies on this issue.

The Court held that absent the administrative record underlying the 2011 subsidy rate

⁷ See *2012 Final Results*.

⁸ See *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*; 78 FR 64916, dated October 30, 2013.

⁹ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey Toscelik Profil ve Sac Endustrisi AS v. United States* Court No. 13-00371; Slip Op. 14-126 (CIT 2014), dated February 13, 2015.

(pulled forward to 2012), Toscelik lacked an argument “that could have resulted in redress of the error in the eleventh review.”¹⁰ The Court further held that the 2012 determination with regard to Toscelik represented a “derivative action” that “turns wholly on the lawfulness *vel non* of the {2011 review}.”¹¹ The Court, thus, considered that in this case the law did not require Toscelik to file an administrative brief merely to preserve the right to appeal and directed Commerce to consider in its remand the amended final results of the 2011 review.

On April 15, 2016, the Department filed the Final Remand Results with the Court, in which it assigned Toscelik for the 2012 review Toscelik’s amended *de minimis* rate from the *2011 Amended Final Results*, which was *de minimis*.¹² On May 11, 2016, the Court entered judgment sustaining the Final Remand Results.¹³

Timken Notice

In *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, 626 F.3d at 1381, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s judgment in *Toscelik II* sustaining the Final Remand Results constitutes a final decision of the Court that is not in harmony with the Department’s *2012 Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

¹⁰ See *Toscelik I*, at 10.

¹¹ *Id.* at 11.

¹² See Final Remand Results at 5-6. While subject to the 2011 review, Toscelik was not selected for individual examination.

¹³ See *Toscelik II* at 1.

Amended Final Results

Because there is now a final court decision, the Department is amending the *2012 Final Results* with respect to Toscelik. The revised net subsidy rate for Toscelik during the period January 1, 2012, through December 31, 2012, is as follows:

Producer/Exporter	Total Net Subsidy Rate
Toscelik Profil ve Sac Endustrisi A.S.	0.44 percent, <i>de minimis</i>

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld in a final and conclusive court decision, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the above listed exporters at the rate listed above.

Cash Deposit Requirements

Since the *2012 Final Results*, the Department has established a new cash deposit rate for Toscelik.¹⁴ Therefore, the cash deposit rate for Toscelik does not need to be updated as a result of these amended final results.

¹⁴ See *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, in Part*, 80 FR 61361 (October 13, 2015).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 27, 2016.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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